

REMARKS

Claims 1-17 are pending in this application. By this Amendment, claims 1-16 are amended; and new claim 17 is added. Claims 1-16 are amended to address the rejections under 35 U.S.C. 112, to remove reference numbers to the drawings, to replace the phrase "characterized in that" with the word "wherein" and to conform with current U.S. patent practice.

No new matter is added to the application by this Amendment. New claim 17 finds support in amended claim 16 and retains the features canceled from claim 16.

Reconsideration of the application is respectfully requested.

I. Allowable Subject Matter

Applicant thanks the Examiner for the indication that claims 3 and 11 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

II. Rejection Under 35 U.S.C. 112

Claims 1-16 were rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. This rejection is respectfully traversed.

The Patent Office alleges that the claims are indefinite for the reasons set forth below. Specifically, the Patent Office alleges:

It is not clear as to where the pre-amble of claim 1 ends and where the body of the claim begins.

Characterized in the claims is non-descriptive.

On the same is indefinite in claim 1.

Special form is non-descriptive, in claim 1.

In claim 5, further stabilizing element is indefinite.

Each pentagon in claim 7 and 8 has no antecedent basis.

In claim 16, it is unclear as to what "especially" is referring to.

In claims 6 and 9 the applicant, must make it clear, as to whether one or two ball members are being claimed.

In regard to claim 9, it is not clear as to, whether or not two inner bar modules are being claimed.

Applicant respectfully disagrees with the allegations by the Patent Office.

Claim 1 does not recite "special form" as alleged by the Patent Office. Instead, claim 1 recites "spatial form" which is definite and clear to one of ordinary skill in the art.

Claims 1-16 were amended to address the rejections under 35 U.S.C. 112, second paragraph, as set forth in the Office Action. Applicant submits that amended claims 1-16 overcome the rejections under 35 U.S.C. 112, second paragraph.

Thus, Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. 112, second paragraph.

III. Rejection Under 35 U.S.C. 103

Claims 1, 2, 4-8, 10, 15 and 16 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent No. 7,052,437 to Kohler in view of U.S. Patent No. 4,097,043 to Rudy. This rejection is respectfully traversed.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under 103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). There must be some suggestion, teaching, or motivation arising from what the prior art would have

taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016, 1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The Patent Office acknowledges that Kohler does not teach or suggest a device having a frame member that is a Koshedron. The Patent Office introduces Rudy as

allegedly teaching a play ground climber in the shape of a Koshedron. The Patent Office alleges that it would have been obvious to one of ordinary skill in the art at the time of the invention to manufacture a playground structure of a Koshedron as one of several design shapes available in the art of designing playground structures. Applicant respectfully disagrees with the allegations made by the Patent Office.

Rudy fails to remedy the deficiencies of Kohler acknowledged by the Patent Office because Rudy, at best, teaches a dodecahedron which is not an icosahedron as specifically defined in the present claims. A skilled artisan would not have modified Kohler with Rudy to achieve the presently claimed rope game device because both Kohler and Rudy fail to teach an icosahedron.

Contrary to the Patent Office's allegations, Kohler also fails to teach or suggest equilateral triangles in the net or the frame as frame components.

A skilled artisan would have only known to use dodecahedrons to build game devices as evidenced by Rudy. The reason a skilled artisan would only have built game devices with dodecahedrons is because dodecahedrons may be stacked. In contrast, icosahedrons can not be stacked. As a result, a network of dodecahedrons may be endlessly expanded with constant distances between the ropes. There is no possibility of endless extension of icosahedrons with constant distances between the ropes. Thus, there is no reason a skilled artisan would build a game device with an icosahedron instead of a dodecahedron as taught by Rudy.

Kohler and Rudy, taken singly or in combination, fail to teach or suggest a rope game device having an outer frame that has an icosahedron shape, wherein edges and

corners of the icosahedron shape are formed as frame elements having a shape of an equilateral triangle as required by claim 1.

Because these features of independent claim 1 are not taught or suggested by Kohler and Rudy, taken singly or in combination, these references would not have rendered the features of independent claim 1 and its dependent claims obvious to one of ordinary skill in the art.

For at least these reasons, claims 1, 2, 4-8, 10, 15 and 16 are patentable over the applied references. Thus, withdrawal of the rejection under 35 U.S.C. 103(a) is respectfully requested.

IV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-17 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Early and favorable action is earnestly solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicant respectfully requests that this be considered a petition therefor. The

Commissioner is authorized to charge any fee(s) due in this connection to Deposit
Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account
No. 14-1263.

Respectfully submitted,
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